

application, of which Claims 1 to 3, 5 and 13 are withdrawn from consideration, and of which Claims 4, 9, 12, 16, 21, 26, 31, 36, 41, 46, 51, 56, 61, 66, 71, 76, 81, 86, 91, 96, 101, 106, 111 and 116 are the independent claims. No new claims have been added, and none of the pending claims are presently being amended. Reconsideration and further examination are respectfully requested.

In the Office Action, Claims 4, 6 to 12 and 14 to 120 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No 5,589,006 (Itoyama '006) in view of U.S. Patent No. 5,786,086 (Frihart), based on the Examiner's position that all of the jacket materials (polyethylene resins, polyamide resins, vinylidene fluoride resins, chloroprene rubber, ethylene-propylene rubber, silicone resins, and fluroresins) are "functionally equivalent," since they are recited as a group of possible materials in Applicants' specification at page 27, lines 8 to 15, and, as a result, Frihart's teaching of a polyamide resin jacket renders the claims obvious. Reconsideration and withdrawal of this rejection are respectfully requested.

Applicants respectfully submit that the aforementioned § 103 rejection based on Itoyama '006 and Frihart is erroneous and improper because Applicants' specification cannot properly be relied on to establish equivalence, because the specification is neither an admission of prior art nor an admission of equivalency of the various claimed jacketing materials.

In more detail, the Office Action, at page 4, asserts that, since polyamide resin was found among the group of materials presented at page 27, lines 8 to 15 of the specification, and since the materials appear to be equivalent according to the Applicants' disclosure, and since no criticality is given in the specification to one jacketing material over any other, and since it is Applicants' intention to cover various modifications and

equivalent arrangements of the instant invention, the different materials set forth in the claims materials are functionally equivalent. Applicants respectfully submit this assertion to be contrary to long-standing precedent, and the U.S. Patent and Trademark Office Manual of Patent Examining Procedure (MPEP).

Specifically, MPEP § 2144.06 states that, in “order to rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on applicant’s disclosure or the mere fact that the components at issue are functional or mechanical equivalents.” See MPEP § 2144.06, citing In re Ruff, 118 U.S.P.Q. 340 (C.C.P.A. 1958) (copies attached hereto). In this regard, Applicants respectfully submit that the Office Action cannot rely solely on the Applicants’ disclosure as a basis for equivalence to support the obviousness rejection without providing evidence of the alleged equivalency. Rather, Applicants assert that, in order to rely on equivalence as a rationale for an obviousness rejection, it must be known to the prior art or obvious to one of ordinary skill in the art that the proposed substitution is of one equivalent for another.

In this regard, the Office Action does not provide any evidence that the equivalency of the recited jacketing materials was either recognized by the prior art, or obvious to one of ordinary skill in the art, as required by MPEP § 2144.06 and In re Ruff. Applicants therefore submit that independent Claims 4, 9, 12, 16, 21, 26, 31, 36, 41, 46, 51, 56, 61, 66, 71, 76, 81 86, 91, 96, 101, 106, 111, and 116 are allowable over the cited art. Applicants therefore respectfully submit that the application of the specification as an admission of equivalence is improper and that the § 103 rejection based on Itoyama ‘006 and Frihart is also improper and must be withdrawn.